

Message

From: Shiffman, Cari [Shiffman.Cari@epa.gov]
Sent: 2/1/2021 11:12:38 PM
To: Starfield, Lawrence [Starfield.Lawrence@epa.gov]
CC: LaBoda, Sarah [LaBoda.Sarah@epa.gov]; Johnson, Kathleen [Johnson.Kathleen@epa.gov]
Subject: Draft Note to Avi - OECA Housekeeping Memos
Attachments: Revocation of Requirement to Track State Assists (Draft 2-1-21).docx; Draft Memo Revoking Early Notice of Referrals.docx

Larry – Kathleen put together a note for you to send to Avi Garbow on sunseting and revoking the state assists and early notice on referrals memos.

Avi,

I wanted to provide you with a heads up on two housekeeping memos I plan on issuing this week to sunset and revoke two memos issued under the prior Administration. Neither of these memos were “guidance” under EO 13891 which required the posting of guidance intended to have a future effect on the behavior of regulated parties – they were internal instructions to staff on program operations and were not posted on the EO guidance page.

State Assists Memo:

I plan to issue a memo to revoke a 2019 memo to track State Assists. Regions often provide a range of assistance to authorized states for enforcement matters. Assistance can vary from providing information to helping the states formulate injunctive relief in complex matters. The prior Administration sought to catalogue the most significant of these “State Assists” in an effort to more comprehensively describe federal enforcement efforts. To that end, regions were required to record all state assists requiring a “substantial level of effort” and to continuously track a subset of these efforts through case conclusion. The tracking proved to be burdensome, confusing and did not add value to the agency’s efforts to comprehensively describe its enforcement program. Regions will continue to provide this useful assistance to the states, but will save time and resources if we eliminate the tracking requirement.

Early Notice on DOJ Referrals Memo:

I plan to issue a memo to sunset a 2018 interim policy which required “early notice” for civil judicial referrals. These early notice procedures required regions to brief their RAs as soon as the case team made a recommendation to pursue a case judicially, and to provide those briefing materials to the OECA AA as well. In addition, the regions were required to submit a copy of the finalized referral to the OECA AA *before* sending it to DOJ. This memo sunsets those early notice procedures, and requests only that Regions provide a copy of the referral to the OECA AA at the time it is transmitted to DOJ, consistent with existing delegations. This was the more streamlined process employed prior to the Trump Administration and provides the AA with situational awareness of new judicial matters.

Please let me know if you have any questions on either of these two housekeeping items.

Larry